IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971
No. 71-1566

FILED
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MICHAEL RODAK, JR., CLERK

John W. Blasecki, Jr., William L. Broadon, Clark Cochrane, A. J. Howard Clement, III, William Harris, Harris C. Johnson, Morris King, Benjamin Ruffin, William Service, Elizabeth Tornquist, and William Towe,
Petitioners,

v.

City of Durham, North Carolina; Vance Fisher, Mrs. R. O. Everett, C. E. Boulware, Thomas M. Hunt, Allen D. Aldridge, W. T. Coman, Charles L. Steele, J. S. Stewart, Wade Cavin, Mrs. Dillard Griffin, Paul Alford, and W. A. Biggs, the Members of the City Council of the City of Durham, North Carolina; R. W. Grabarek, Mayor of the City of Durham, North Carolina; I. Harding Hughes, City Manager of the City of Durham, North Carolina; and W. W. Pleasants, Chief of Police of the City of Durham, North Carolina,
Respondents.

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ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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BRIEF OF RESPONDENTS IN OPPOSITION TO GRANTING OF WRIT

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Claude V. Jones
Central Carolina Bank Building
111 Corcoran Street
Durham, N. C. 27701
Telephone: 919-682-5594
Counsel for Respondents

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ARGUMENT

I

The FIRST Amendment rights of Petitioners are not violated by the Ordinance in question.

The locus is a small triangular or wedge-shaped plot located at what is known as Five Points in Durham, North Carolina. Five Points is located in or near the center of the down-town area of Durham. As stated by the Circuit Court, Five Points is to Durham what Times Square is to New York. It is a busy, much used section of the City. Both pedestrian and vehicular traffic is heavy there. In addition to the normal pedestrian traffic which is found there, the area and adjacent sidewalks are extensively used by many people who wait for buses, since the Five Points Park area is a major bus stop in the City of Durham.

Main Street, Chapel Hill Street, and Morris Street, run into and across so as to form five points and the Five Points Park is located at the eastern triangle of this cross-way.

Just about three blocks north of this small park there is located (on Morris Street) an entire City block owned by the City of Durham, a portion of which is fenced in and used for baseball and other athletic contests, and a substantial portion unfenced and used for the parking of vehicles in conjunction with attendance at the ball park. Both the area inside

as well as outside the ball park may be used by the public for meetings of all kinds. The bloc will accommodate several thousand people and is lighted for night use.

Prior to the passage of the ordinance in question, there had been disruptive and destructive usages made of the Five Points Park. On one such occasion, some 300 people met there and burned a casket. A tree was set afire, and when the firemen sought to extinguish the fire the crowd locked arms and prevented them from doing so. The crowd broke water sprinkler heads, tore down shrubbery, and broke out and smashed glass store windows near the park. On another occasion in the same month in which the ordinance was passed, about 13 days prior to its passage, a crowd damaged shrubbery and sprinkle heads at the park and smashed glass store windo nearby.

The City Council passed the ordinance for the reasons therein recited in the exercise of its police power in promotion of the public safety, health, convenience and welfare.

No permit is required from the police or any one else to use Five Points Park.

No censorship is placed upon the content of speech at the Five Points Park.

No attempt is made either directly or indirectly to control or regulate the methods of exercising free speech at the Five Points Park.

The City Council had a compelling interest in the protection of property, and in preventing unreasonable congestion and uncontrolled blockage of traffic at Five Points.

As stated in Cox v. Louisiana, 379 U.S. 536, 544 (1965), "Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly". This is not a case of abridgement of the privilege of a citizen to use the streets and parks for political discussions in the guise of regulation. Hague v. Committee for Industrial Organization, 307 U.S. 496, 515-516 (1939).

Instead of being repressive, the correspondence between the Chief of Police and Blasecki discloses an attitude of cooperation and willingness to assist plaintiffs in having their meeting at the Park.

Accommodation of competing interests involved often means that the right to parade must yield to reasonable state regulation of time, place, manner, and duration.

Abernathy v. Conroy, 4 Cir., 429 F 2d 1170 (1970)

As the District Court Judge below stated in his Memorandum Opinion in upholding the validity of the Ordinance:

> "There is no allegation that plaintiffs or any other group are otherwise limited in where they may meet, or that

they could not obtain a permit to use the streets, or that they would not be allowed to make a reasonable use of the sidewalks. The Court takes judicial notice that there are other locations available in the vicinity, such as the ball park or the armory or --- for nighttime use --- public parking lots.

The Five Points intersection has been familiar to the Court for many years. Its geometric layout necessarily gives rise both to traffic and to pedestrian problems. Its location in the downtown area --- the streets which cross in an "X" configuration are the two main arteries of Durham proper --- further complicates the situation. Also, people are often gathered there to await the City buses which regularly stop to load and unload passengers.

Upon a balancing of the competing interests, it is found that the limitation questioned here is not unreasonably inhibitive of First Amendment Rights."

Cameron v. Johnson (1968) 390 U.S. 611, 20 L. Ed. 2d 182, 88 S.Ct. 1335

Boyle v. Landry (1971) 401 U.S. 77, 27 L. Ed. 2d 696, 91 S.Ct. 758

Burton v. City of St. Louis (1970) 309 F. Supp. 1078

II

The Ordinance is not void for vagueness.

It is entirely proper for the City Council to place a reasonable limit on the number of people who can assemble in this Park. In holding that 50 was not an unreasonable limitation, the lower Court did not err.

Cox v. Louisiana, supra.

That interpretation of the ordinance which will permit upholding its constitutionality is to be chosen.

United States v. Harriss, (1954) 347 U.S. 612

III

Ordinarily, a federal court will not interfere with state court trial of criminal actions.

The Fourth Circuit said, in this case, that "It is also elementary that a United States Court cannot interpret authoritatively and finally a state criminal ordinance. We think it inappropriate that we should attempt interpretation because one of the special circumstances making abstention appropriate 'is the susceptibility of a state statute of a con-

struction by the state courts that would avoi or modify the constitutional question".

Zwickler v. Koota (1967) 389 U.S. 241, 249

It is a familiar rule that courts of equ do not ordinarily restrain criminal prosecuti No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violat of constitutional guaranties, is not a ground for equity relief since the lawfulness or con stitutionality of the ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction.

Douglas v. City of Jeannette (1943) 319 U.S. 157, 87 L. Ed. 1324, 63 S.Ct. 877

Younger v. Harris (1971) 401 U.S. 37, 27 L. Ed. 2d 669, 91 S.Ct. 746

Golden v. Zwickler (1969) 394 U.S. 103

CONCLUSION

For the reasons stated above, and others contained in the decision handed down by the Fourth Circuit Court of Appeals, Respondents respectfully submit that the Petition for Writ

of Certiorari should be denied.

Claude V. Jones

Claude V. Jones
Central Carolina Bank Building
111 Corcoran Street
Durham, N. C. 27701
Counsel for Respondents